

August 21, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Debra Otolski appeals the termination of her parental rights regarding her children C.O., B.R., and D.O. We affirm.

Issue

Otolski raises one issue, which we restate as whether there is sufficient evidence to terminate her parental rights.

Facts

On July 27, 2004, C.O., born on February 28, 1996, B.R., born on January 9, 1995, and D.O., born on September 19, 2000, were found to be children in need of services (“CHINS”). On October 27, 2004, the Allen County Department of Child Services submitted a permanency plan calling for the termination of Otolski’s parental rights. A final hearing was held on September 1 and September 8, 2005. On December 7, 2005, the trial court issued an order terminating Otolski’s parental rights. The trial court’s order provided in part:¹

II. PRIOR CHINS ADJUDICATION

¹ The trial court issued separate orders for each child. The findings included in today’s decision relate specifically to C.O. The order regarding to D.O. is substantially similar to this order. The order regarding B.R. contains the same findings and includes additional findings regarding the termination of her father’s parental rights.

5. On December 4, 1997, [C.O.] and her siblings [Au.O.] and [Al.O], and [B.R.] were adjudicated [CHINS] A Dispositional Order was issued on February 9, 1998 and the elder children were placed in the custody of their father. The 1997 CHINS adjudication was based on mother's admission that she had difficulty in controlling her children, had an alcohol abuse problem, had recent problems with stress, depression and emotional stability that interfered with her ability to provide necessary care for her children, and had an unstable lifestyle, including having various male companions, one who physically abused [C.O.]. The mother also admitted that her children, [Au.O] and [Al.O.] were displaying sexualized behaviors that were a danger to themselves and others.

6. Services were provided to the mother under the 1998 dispositional decree including individual counseling, psychiatric care, the provision of psychotropic medications, and an alcohol treatment program. Ultimately, permanency plans for [Au.O.] and [Al.O.] were adopted that called for their placement in their father's custody. Their wardships were terminated on August 17, 2001.

7. At a May 6, 1999 review hearing, wardship was terminated as to [B.R.]. However, a new petition alleging that [B.R.] was a [CHINS] was filed on February 2, 2000. At an Initial Hearing held on March 6, 2000, the mother admitted allegations that she had been arrested for driving while intoxicated, that she continued to have relationship problems that adversely affected [B.R.], and that [B.R.] was engaging in violent behaviors. . . .

8. A factfinding hearing was held on November 8, 2000 on the remaining allegations denied by the parents. In adjudicating [B.R.] to be a [CHINS], the court found that the mother had been provided services to either prevent removal of her children from her home or reunite her with her children. Those services included 22 months of personal therapy and counseling with Wayne Gerard, multiple parenting classes, an alcohol abuse counseling program at Brown and Associates, respite care for [C.O.], Gateway Woods housing assistance, Park Center counseling, Heather Family services, First Steps program, ARC, SCAN, and

Anthony Wayne Services. Despite those services, the court ruled that the mother was unable to control her children's behaviors, was drinking alcohol, and was not able to maintain payments for her housing. . . .

9. On November 28, 2000, a dispositional decree was entered and services were ordered for the parents.

10. On February 12, 2002, the court rejected a prior permanency plan for the sister, [C.O.], that authorized the Department of Children Services to file a petition to terminate parental rights. In its stead, the Court determined that reunification of [C.O.] and [B.R.] with their mother served their best interests. On April 22, 2003, their wardships were terminated.

II. FINDINGS OF FACT REGARDING THE CURRENT CHINS ADJUDICATION

11. The children were again removed from the mother's care on October 30, 2003. A Preliminary Inquiry was held . . . on November 5, 2003[.] The court found probable cause to believe that the children, [B.R.], [C.O.], and [D.O.], were [CHINS]. The Department of Child Services, was authorized to file a petition to adjudicate the children to be [CHINS]. The children were placed in foster care.

12. An Initial Hearing was held on December 2, 2003. The mother denied the material allegations and the case was referred for a fact-finding. Provisional orders for services were issued and the mother was thereby required to participate in individual counseling with Wayne Gerard, participate in a home-based services program, to take medications as prescribed, to follow the terms of her probation or parole, and to appropriately participate in visits with her children. The court found that the best interests of the children were served by continuing them in licensed foster care.

13. On July 27, 2004, a fact-finding hearing was held as to the allegations against the respondent mother. The court found that the children were [CHINS] [sic] The adjudication

of the children as [CHINS] was based upon the following facts:

- a. The respondent mother did not provide appropriate supervision of the children and allowed young men to be alone with the children. While the children were in the home, the young men were permitted to watch adult rated movies and consume alcohol.
- b. The child, [B.R.], was sexually victimized by one of the young men the mother chose as a babysitter.
- c. The mother has had continual problems with alcohol abuse and emotional instability.
- d. The respondent mother has not been able to provide stable and safe housing for the children.

14. A Dispositional Hearing was held on August 5, 2004 and the Respondent-mother was placed under a parent participation program. The mother was ordered to refrain from criminal activity; to maintain clean, safe and appropriate housing; and to cooperate with the Department of Child Services by attending all case conferences and accepting announced and unannounced home visits by the case managers. She was ordered to provide the caseworkers with accurate information regarding her finances, paternity, and family history; to furnish caseworkers with current consents of release of exchange of information; and she was ordered to participate in home-based services, individual counseling, participate in visits with the children, and to take all of her medications as prescribed. She was directed to obey the terms of her probation or parole and to complete or provide copies of a drug and alcohol assessment. She was refrained from allowing unrelated males in her home while the children were present and to refrain from allowing unrelated males to serve as babysitters for the children.

15. Roger Wolfe and Ken Burcham were once presented by the mother as the alleged fathers of [D.O.] and [C.O.] respectively. Both men maintained contact with the children. At times the contact was with mother's blessings. At other

times she resisted their contact. Both men unsuccessfully sought to intervene in the CHINS case.

16. On October 27, 2004, the Department of Child Services submitted proposed permanency plans for the termination of the parent- child relationships and the adoption of the children. The court noted in its order that the mother was not benefiting from services. The court found that, “The Office of Family and Children presented evidence at trial that supports their contention that despite receipt of services and despite compliance with services, the mother has not benefited from services.” Nevertheless, the court concluded that legal technicalities precluded approval of the proposed plan. Reunification was therefore adopted as the permanency orders for [B.R.], [C.O.], and [D.O.].

17. At the February 8, 2005, permanency review hearing, the court again found that the parents had not complied with the parent participation plan. A permanency hearing was held on March 29, 2005, and the court adopted a permanency plan for [B.R.], [C.O.], and [D.O.] that provided for the termination of the parent – child relationships.

18. The children have been placed outside the home of their mother and any known fathers since a date prior to the Dispositional Decree, a period in excess of twenty-three (23) months.

19. The Mother has been twice convicted on charges of forgery and theft. She was first convicted on March 10, 2003. She was committed to the Department of Corrections for four (4) years, suspended, and was ordered placed under probation supervision Her probation was revoked following her arrest for Driving Under the Influence of Alcohol on May 5, 2004.

She was found guilty of two (2) counts of forgery, Class C Felonies . . . on June 7, 2004 and was sentenced to the Department of Corrections for one and one-half (1½) years to be served in the Allen County Community Corrects Home Detention.

On August 26, 2004 the mother pled guilty to operating while intoxicated, a Class D Felony She was sentenced to the Department of Correction for a period of

three (3) years of which two and one-half (2½) years were suspended. The case was ordered to serve consecutive to her convictions for forgery and theft

20. On or about October 16, 2004, the mother ingested large amounts of alcohol and medications in an apparent attempt to commit suicide. She was admitted to Parkview Behavioral Health. Thereafter, the Allen County Community Corrections Program filed a petition for the revocation of the mother's home detention. Probable cause was found that the mother violated the terms of her home detention and a warrant was issued for her arrest on November 3, 2004. She was subsequently placed on the forensic diversion program and was ordered to reside at the Quinn House.

21. From November 2004 to February 2005 the Respondent Mother lived at the Quinn House. While living there, the Respondent permitted two (2) men to visit her in the home and she was subsequently expelled.

22. Then in February, 2005 through July 6, 2005 she resided at the "Wings of Hope" a woman's shelter boasting a recidivism rate of 2%. Linda Kluczinske, director of the Hope House reports that the Respondent mother has successfully completed the program.

23. The mother's current therapist, in addition to Wayne Gerard, is Lillian Carroll. The mother is being treated by Dialectical Behavioral Therapy (DBT) to address issues of depressive disorder, substance abuse, adjustment disorder, and her attendant legal issues. Therapist Carroll reports that the mother has made significant progress.

24. The mother has been in a variety of alcohol treatment programs since 1999. Between 1997 and 2003 she completed three (3) separate parenting classes. She has been in therapy with Wayne Gerard for twenty-five (25) years.

25. Today the mother asserts, she is truly vested in her rehabilitation. She says that she believes in God, attends church, and is a redeemed alcoholic.

26. The mother is not employed. She receives disability benefits of Six to Seven Hundred (\$600.00 - \$700.00) Dollars per month and each child is entitled to benefits of Seventy-four (\$74.00) per month. Her money is managed by her mother. The mother currently lives in a mobile home in Grabill, Indiana, and a portion of her living expenses are assumed by a local ministry.

27. Mother is deeply involved in extensive activities designed for her recovery. She is involved on a weekly basis in the Successful Living Program and she continues to participate in services through Wings of Hope. She is in therapy with Wayne Gerard and Lillian Carroll, she meets with her Community Corrections casemanager and she attends AA meetings each week. Through these services, the mother has been able to maintain and sustain her recent progress. However, since the demands on her time are significant, her ability to meet the extensive needs of the children is questionable.

28. The mother regularly visits the children under the supervision of SCAN, a local child service agency. The mother has not demonstrated growth in parenting skills in that she has not progressed beyond the initial level. The visits are described as chaotic. The respondent has difficulty in controlling the children's behavior and she has not been able to establish boundaries for the children. The children are uncooperative with each other and are abusive to the mother.

29. The mother's history reflects repeated instances of her involvement with men to the detriment of the children. The mother has promised to refrain from negative relationships with men on several occasions. In each instance the promise has been broken. In a meeting with the mother in July, 2005, [B.R.] extracted eight promises from her mother. One of which was to refrain from negative relationships. However, she has consistently failed to disassociate herself from men who have caused or have the potential to cause physical or emotional harm to the children. Most recently, in the summer of 2005, the mother was accompanied by a man, Larry (last name unknown) to [D.O.'s] school carnival. On another instance, [C.O.] saw the mother in the company of Ken Burcham as she arrived for visitation.

30. The children have had numerous placements and have significantly suffered from abuse and neglect over a period of several years. Extensive services have been provided to the Respondent mother. The children, too, have received services and are currently in therapy.

31. [D.O.] suffers from adjustment disorder and anxiety. He requires clear concise behavioral guidelines and prompt, consistent consequences. His therapist does not believe that the mother's past patterns of behavior indicate that she is able to provide the level of care that child needs.

32. Dr. Therese Mihlbauer has been providing therapeutic treatment for the children since April 2005. Dr. Mihlbauer indicates that [C.O.] needs stability, reassurance, predictability, security, structure, and supervision. Similarly, [B.R.], also needs structure. [B.R.] suffers from post traumatic stress disorder and ADHD.

33. Dr. Mihlbauer indicates that the children can no longer withstand multiple placements. The children need a stable long standing placement with a mentally healthy caregiver.

34. Should the parental rights be terminated, the Department of Child Services have appropriate plans for the children. If parental rights are terminated, the children's cases would be transferred to Catholic Charities for adoption placement.

35. The Guardian ad Litem (both the former and current) agree that the best interests of the children are served by granting the petitions to terminate the parent-child relationships. Former Guardian ad Litem, Karen Richards, cites the lengthy history of services afforded to the mother since 1997. Ms Richards believes that the mother did not benefit from the services and the reasons for the children's removal were not corrected. The current Guardian ad Litem, April Grunden, cites the mother's continued poor choices with regard to the children as a basis for her conclusion that the mother has not benefited from services. The mother has mislead [sic] [C.O.] as to the name of her father, has failed to appear for visits with the children at school, and has

established questionable relationships with a variety of men contrary to the needs of the children.

Appellant's Br. pp. 19-23 (footnotes omitted).

With regard to all three children, the trial court concluded:

In order to maintain, the mother has had to involve herself in multiple on-going services. Little time remains in her daily living schedule to provide for her children. Although she has shown some improvement in her mental health, she still cannot maintain her own finances and is dependent on others for housing. During her visits, the mother has not been able to maintain structure and order. The Court cannot conclude that the mother will be able to sustain her recovery AND provide for the significant mental, emotional, and behavioral needs of the children should they be placed in her care. Therefore reunification is not likely to occur in the foreseeable future. Further delay in the children's permanency is contrary to their welfare. The children have been removed from the mother's care and have been in multiple placements for a significant portion of their young lives. Their healthy development requires that they be provided a safe, structured and permanent home. Despite the provision of extensive services, the mother has not yet attained a functioning level to meet those needs.

Id. at 24, 32, 39. The trial court specifically concluded, "that by clear and convincing evidence there is a reasonable probability that the reasons that brought about the child's placement outside the home will not be remedied." Id. The trial court also concluded that termination of Otolski's parental rights was in the children's best interests. Otolski now appeals.

Analysis

Otolski appears to argue that the trial court improperly concluded that the reasons for placement outside the home of the parents will not be remedied and that the trial court

erroneously concluded that termination was in the children's best interests. "When reviewing the termination of parental rights, we do not reweigh the evidence or judge witness credibility." Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). "We consider only the evidence and reasonable inferences that are most favorable to the judgment." Id. Where a trial court enters findings and conclusions granting a petition to terminate parental rights, we apply a two-tiered standard of review. Id. First, we determine whether the evidence supports the findings. Id. Then we determine whether the findings support the judgment. Id. We will set aside a judgment that is clearly erroneous. Id. A judgment is clearly erroneous when the findings do not support the trial court's conclusions or the conclusions do not support the judgment. Id.

A petition to terminate the parent-child relationship must allege:

(A) one (1) of the following exists:

- (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
- (ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or
- (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;

(B) there is a reasonable probability that:

(i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or

(ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2).

The DCS had the burden of proving these allegations by clear and convincing evidence. See Bester, 839 N.E.2d at 148. Clear and convincing evidence need not show that the continued custody of the parent is wholly inadequate for the child's very survival. Id. Instead, it is sufficient to show by clear and convincing evidence that the child's emotional and physical development is threatened by the parent's custody. Id.

In determining whether the conditions will be remedied, the trial court first should determine what conditions led the State to place the child outside the home, and second if there is a reasonable probability that those conditions will be remedied. In re C.C., 788 N.E.2d 847, 854 (Ind. Ct. App. 2003), trans. denied. "When assessing a parent's fitness to care for a child, the trial court should view the parent as of the time of the termination hearing and take into account any evidence of changed conditions." Id. "However, the trial court should also take into account the parent's habitual patterns of conduct as a means of determining the probability of future detrimental behavior, as well as the services offered by OFC to the parent and the parent's response to those services." In re K.S., 750 N.E.2d 832, 837 (Ind. Ct. App. 2001).

Otolski argues that the trial court failed to consider her circumstances at the time of termination hearing. To the contrary, the trial court clearly considered changed conditions at the time of the hearing. In its order, the trial court observed that Otolski's mental health had improved, that she had successfully completed the program at Wings of Hope,² and that she "is deeply involved in extensive activities designed for her recovery." Appellant's Br. p. 22. The trial court recognized that, through extensive participation in services, Otolski has been able to maintain and sustain her recent progress. The trial court did not overlook Otolski's recent progress. The trial court simply concluded that Otolski could not likely devote the time necessary to the continuation of her progress while also providing for the extensive needs of the children.

Additionally, Otolski's children were first adjudicated CHINS on December 4, 1997. From that time until the time of the final hearing in September 2005, Otolski was intermittently involved with the DCS and repeatedly offered services to help improve her mental health and parenting skills and achieve sobriety. Despite these offerings, Otolski only successfully completed the program offered at the Wings of Hope shelter in July 2005—just two months before the final hearing. Also, after twenty-five years of counseling with Wayne Gerard and a suicide attempt, Otolski only began making progress with her mental health issues when she started seeing another therapist in January 2005. Although the trial court did recognize Otolski's progress at the time of

² The director of Wings of Hope testified that the program was comprehensive and addressed substance abuse, parenting, budgeting, and basic life skills.

hearing, it was not required to ignore her habitual patterns of conduct as a means of determining the probability of future detrimental behavior. See K.S., 750 N.E.2d at 837.

Despite Otolski's improved mental health and recent sobriety, the findings provide little indication that Otolski's parenting skills had significantly improved at the time of the hearing. One of the reasons for the initiation of the most recent CHINS proceedings was Otolski's failure to provide adequate supervision of the children and the resulting sexual abuse of B.R. by a person Otolski chose as a babysitter. The trial court found that Otolski had not demonstrated growth in parenting skills, that the supervised visits were chaotic, and that Otolski had difficulty controlling the children's behavior and establishing boundaries for them. The findings also indicate that despite promises to refrain from negative relationships with men, Otolski "has consistently failed to disassociate herself from men who have caused or have the potential to cause physical or emotional harm to the children." Appellant's Br. p. 23. Otolski does not challenge these findings.

Ultimately, the trial court concluded that, although Otolski had made improvements in her own life, it was unlikely that she could sustain those improvements and provide for the extensive mental, emotional, and behavior needs of the children at the same time. The trial court properly concluded that there was a reasonable probability that

the reasons for the children's placement outside of the home, especially those relating to Otolski's parenting skills, would not be remedied.³

Otolski also contends that the trial court "wrongly concluded that the lack of availability of the mother's home for immediate placement of the children necessitated the termination of her parental rights." Id. at 16. She argues that in the very near future she would be able to care for her children and suggests that the facts here are similar to those in Rowlett v. Vanderburgh County Office of Family and Children, 841 N.E.2d 615 (Ind. Ct. App. 2006).

In Rowlett, the father, while incarcerated, attended 1,100 hours of counseling and group services, had earned twelve hours of college credits, had not used drugs and intended to maintain his sobriety after his release. Rowlett, 841 N.E.2d at 622. The father had also secured employment and been accepted to college upon his release from prison. Id. We concluded that the Office of Family and Children did not present clear and convincing evidence that there is a reasonable probability that the conditions that resulted in the children's removal would not be remedied. Id.

We also concluded that the record did not support a finding that termination at that point in time was in the children's best interests. Id. In Rowlett, when the children were removed from their mother's care, they were immediately placed in the care and custody

³ Indiana Code Section 31-35-2-4(b)(2)(B) requires a reasonable probability that either the conditions resulting in placement outside the home would not be remedied or that the continuation of the parent-child relationship poses a threat to the well-being of the child. See In re J.W., 779 N.E.2d 954, 962 (Ind. Ct. App. 2002), trans. denied. Accordingly, we need not address the DCS's argument that the continuation of the parent-child relationship posed a threat to the well-being of the children.

of the maternal grandmother and step-grandfather and remained there throughout the proceedings. Id. at 623. At the time of the dispositional hearing, the children had been in the care of the maternal grandmother for nearly three years, and the evidence presented at the hearing demonstrated that the children were thriving under the arrangement. Id. We observed:

Under such circumstances, however, where the children have been in the maternal grandmother's care for nearly three years and where the plans are that upon termination of Father's rights, they will continue under her care, we see little harm in extending the CHINS wardship until such time as Father has a chance to prove himself a fit parent for the children. This is not a case where the children are in a temporary arrangement pending termination of parental rights. Rather, in this case, continuation of the CHINS wardship will have little, if any, impact upon them.

Id.

Unlike in Rowlett, there is no indication here that Otolski's children were thriving in their placements or that the children would remain in their placements upon termination. Moreover, it appears that the Otolski children were in temporary arrangements pending the outcome of the proceedings and the continuation of the wardship would have a significant impact on them. For example, the trial court found that the children have had numerous placements and have significantly suffered from abuse and neglect over a period of several years. One of the children's therapists indicated that they can no longer withstand multiple placements and that they need a stable long-standing placement with a mentally healthy caregiver. Finally, upon termination, the children's cases were to be transferred to Catholic Charities for adoption

placement. These facts are significantly different than those in Rowlett and we are not persuaded that its reasoning applies here. This argument fails.

Conclusion

The trial court properly concluded that the reasons for placement outside the home will not be remedied and that termination was in the children's best interests. We affirm.

Affirmed.

SULLIVAN, J., and ROBB, J., concur.